IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.474 OF 2006

Surendra Bhagwandin Chaudhary ...Appellant

Versus

Chandrakishor Alopiprasad Chaudhary
& Others ...Respondents

Shri Rajiv Patil for the Appellant.
Shri V.Z.Kankaria with Shri S.H.Joshi for the Respondent Nos.1 and 2.
Shri V.A.Gangal with Shri A.J.Joshi for the Respondent Nos.3 to 5.
Shri Rajiv Narula i/by M/s Jhangiani, Narula and Associates for the Respondent Nos.7 and 8.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 22, 2007.

P.C.:

1. Heard the learned counsel appearing for the parties. Admit. By consent taken up for hearing. The Appeal is preferred by the original Plaintiff for challenging the order passed by the trial Court on Application at Exhibit 5 for temporary injunction. The suit is filed by the Appellant for partition and separate possession of his alleged one third share in the suit property. By the impugned order dated 28th June, 2006, Applications at Exhibit 5, Exhibit 27 and Exhibit 32 have been decided by the trial Court. In Application at Exhibit 5 the prayer made by the

Appellant is that the Respondent Nos.1 to 5 should be restrained by an order of temporary injunction from creating any third party interest and from carrying on any construction on the suit property. The Application at Exhibit 27 was filed by the Appellant-Plaintiff for temporary injunction restraining the Defendants from digging and constructing on the suit property i.e land bearing Survey No.82/2. The Application at Exhibit 32 was filed by the original Defendant No.6 for temporary injunction against the first to fifth Defendants. By the impugned order, the learned Trial Judge rejected the Applications at Exhibit 5 and Exhibit 32 and on Application at Exhibit 27 directed the parties to the suit to maintain status-quo till further orders. At that time there were only six Defendants impleaded in the suit.

2. On 18th July, 2006 when the Appeal came up before this Court, following order was passed:

> "4. In so far as interim relief is concerned, respondent Nos.1 and 2 may continue with the construction work on plot No.82/2 which is allegdly in possession of the

respondent Nos.1 and 2 entirely at their risk, costs and consequences. Respondent Nos.1 and 2 through Counsel agree and assure before this Court that no equity will be claimed if the final order goes against them. In addition respondents shall not create 3rd party right, title or interest in the said plot No.82 or any premises constructed on the said plot till further orders".

3. Civil Application No.318 of 2007 has been taken out by the Appellant in this Appeal for carrying out amendment for impleading additional Respondents as parties to the Appeal. Reliance is placed on the order passed by the trial Court on 05th January, 2007 by which Application for amendment of plaint made by the Appellant-Plaintiff was allowed. By the said amendment the Appellant was permitted to implead additional Defendants. The Application for amendment was filed on the basis of reply filed by the first and second Respondents in this Appeal in which it was stated that the first to fifth Defendants have entered into an agreement dated 02nd September, 2004 by which the added seventh Defendant was allowed to develop land bearing

Survey No.82/2 (Part) admeasuring 23 gunthas.

4. The learned Advocate appearing for the Appellant pointed out that in the Application at Exhibit 5, prayer for injunction was made only as against first to fifth Defendants. He stated that now it is revealed that the added seventh Defendant is carrying on construction on the property in dispute. He, therefore, submitted that the impugned order may be set aside by granting liberty to the Appellant to amend Applications at Exhibit 5 and 27 for seeking appropriate reliefs against the added Defendants including the seventh Defendant. He submitted that after the amendment is carried out, the learned Trial Judge be directed hear the Application at Exhibit 5 and 27 afresh. He submitted that till Applications at Exhibit 5 and 27 are disposed of, the concerned Respondents be directed to maintain status-quo as of today. The said prayer has been opposed by the learned counsel appearing for the contesting Respondents by pointing out that such a relief cannot be granted at this stage as the seventh Defendant is not even a party to the Application at Exhibit 5 as of today.

5. As of today there does not seem to be any

dispute that on the basis of agreement executed by the first to fifth Defendants, the seventh Defendant is carrying on construction. Though the added seventh Defendant is claiming through first to fifth Defendants, now the Appellant-Plaintiff will have to claim appropriate interim relief as against the added Defendants which was not prayed for in the Application at Exhibit 5. Therefore, the course suggested by the learned counsel appearing for the Appellant deserves to be accepted. However, such a drastic ad-interim relief cannot be granted at this stage as the Application for temporary injunction will have to be heard after the amendment is carried out to the same. A limited protection can be granted to the Appellant restraining the Defendants from creating further third party interests in respect of the suit property. The construction which is in progress will be naturally subject to further orders which may be passed in the Application at Exhibit 5 by the trial Court.

6. The learned counsel for the Appellant states that he may be permitted to carry out amendment to the Applications at Exhibit 5 and Exhibit 27. The amendment will have to be carried out within a period of seven

days from the date of production of an authenticated copy of this order.

7. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 28th June, 2006 in so far as it relates to Applications at Exhibit 5 and Exhibit 27 is quashed and set aside and Applications at Exhibit 5 and Exhibit 27 are restored to file.

(ii) The trial Court will permit the Appellant-Plaintiff to carry out amendment to the aforesaid Applications at Exhibit 5 and Exhibit 27 for adding parties and for claiming appropriate interim reliefs. Amendment shall be carried out within a period of one week from the date on which authenticated copy of this order is produced before the trial Court.

(iii) It is clarified that the order passed below Exhibit 32 is not disturbed.

(iv) The trial Court will decide the Applications at

Exhibit 5 and Exhibit 27 afresh after giving opportunity to the concerned Defendants to file reply to the amended Application. Application shall be decided as expeditiously as possible and preferably within a period of six weeks from today.

(v) Till the disposal of the said Applications, the Defendants in the suit will not create any further third party interests in respect of the suit property. It is clarified that the construction which is being carried out on the suit property will be subject to further orders which may be passed in the aforesaid Applications as well as in the suit.

(vi) All contentions of the parties on merits of the Applications are kept open.

(vii) It is also made clear that the trial Court will decide both the Applications without being influenced by the order impugned as well as observations made in this order.

JUDGE